IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OSA No. 30 of 1998

Date of Decision: December 5, 2006

State Bank of India …Appellant.

Versus.

M/s Rohit Angoora Textiles & ors. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh Thakur, Judge
Whether approved for Reporting?

For the Appellant(s): **Mr. Ashwani Kumar Sharma, Advocate.**

For the Respondent(s): **Mr. Baldev Singh Chaudhary, Advocate for respondent No.3.**

Deepak Gupta, J.

The short question which arises for consideration in this case is whether the trial Court has granted interest at a rate less than the rate of interest agreed between the parties.

The facts which are not in dispute are that defendant No.1 which is a proprietor firm through its proprietor defendant No.2 had obtained a loan from the plaintiff-bank. It had agreed to re-pay the loan amount along with interest @ 17.75% per annum with quarterly rests. The learned Single Judge has held that since the defendant had accepted his liability and has undertaken to

liquidate the amount, he deserves a lenient view. The learned Single Judge has awarded simple interest @ 17.75% per annum. The learned Single Judge has further directed that the defendant shall be liable to pay simple interest from the date the loan was advanced to him till final payment is made. It would be pertinent to mention that the suit was decreed only against defendants No. 1 and 2 and no decree was passed against defendant No.3. However, the plaintiff- bank has not challenged the decree on any other ground except on the ground of the rate of interest.

Mr. Ashwani Kumar Sharma, learned counsel appearing on behalf of the appellant-bank relies upon the judgment of the apex Court in **Corporation Bank v. D.S.Gowda and another**, (1994) 5 SCC 213 and judgment of the Division Bench of this Court in Punjab **National Bank v. M/s Vidya Hatchery,** 1999(3) Shim.L.C.194, and contends that the Court has no discretion in the matter and interest has to be granted as per agreement entered into between the parties.

In **Corporation Bank's** case (*supra),* the apex Court held as follows:-

> "It cannot also be said that the Reserve Bank did not pay "adequate attention" to the question of rests or compounding of interest. While the universal banking practice is usually to charge interest with half-yearly rest, there is nothing to prevent the parties from agreeing to quarterly rest and such an

> agreement would be perfectly valid unless it is shown to be opposed to public policy."

The Division Bench of this Court considered two questions of law with regard to commercial loan advanced by the banks to the customer. The second question which is relevant for decision of the present case reads as follows:-

> "2. Whether in the case of commercial loan the Courts have the discretion to grant a lesser rate of interest than the contractual rate of interest for the period from the date of institution of the suit to the date of payment?"

This question was answered by the Division Bench in the following terms:-

> "5. Therefore, the legal questions under consideration are answered in terms of the law laid down by the Supreme Court in Corporation Bank v. D.S.Gowda and another (supra) that the Court has no discretion to grant different rate of interest than the contractual rate of interest from the date it is due and payable to the date it is actually paid. In case of commercial loans of the Banks, Section 34 of the Civil Procedure Code is to be applied in the context of circulars/directions issued by the Reserve Bank of India under Sections 21 and 35-A of the Act.
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> 6. It cannot be disputed that when a Bank advances loan on interest with quarterly rests, the interest is worked out at the close of every quarter and added

towards the outstanding balance for the purpose of computation of interest after deducting the amount paid by the customer, if any. In such a case, the principal sum adjudged would be the original principal amount of loan and the amount of interest accrued thereon, as held by the Supreme Court in *Bank of Baroda v. Jagannath Pigment and Chemicals and others*, (1996) 5 SCC 280. No doubt, in *Central Bank of India v. Ravindra and others,* (1996) 5 SCC 279, the question of liability of borrower to pay interest on the principal sum to include interest that became merged with the principal sum adjudged or principal sum as lent, stands referred to a Bench of five Judges, yet till the reference is answered by the larger Bench either by setting aside or reversing or modifying the ratio of the judgment in *Bank of Baroda v. Jagannath Pigment and Chemicals and others (supra*), it continues to be the law of the land and binding on us. Following the said ratio in their judgments passed in RFA No.70 of 1987 titled *Punjab National Bank v. Shri Karam Singh and others,* RFA No.73 of 1987 titled *State Bank of India v. M/s Himalaya Engineer Works and others* and *Uco Bank v. Mahesh Kumar and others*, 1997 (3) Shim.L.C.403, the Division Benches of this Court have held that 'principal sum adjudged' would be inclusive of the amount of interest accrued on the principal amount of the loan."

Keeping in view the above law laid down by the Apex Court and this Court, the appeal is allowed and it is held that

the plaintiff – Bank is entitled to recover the suit amount of Rs.6,83,541/- along with interest @ 17.75% per annum with quarterly rests from the date of filing of the suit i.e. 9.7.1996 till the payment of the entire amount. The plaintiff- bank shall also be entitled to costs throughout. It is, however, made clear that the plaintiff – Bank shall be entitled to recover this amount from defendants No. 1 and 2 only.

(Deepak Gupta),J.

December 5, 2006. (S.S.Thakur), J.
s.